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SPECIAL CIVIL APPLICATION No. 1015 of 1996

DATE OF DECISION : 06-02-1996

For Approval and Signature :
THE HON'BLE MR. JUSTICE S.K KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the judgment ? YES/NO
2. To be referred to the Reporter or not ? YES/NO
3. Whether their Lordships wish to see the fair copy of the judgment ? YES/NO
- 4.

III

of law as to the interpretation of the
Constitution of India, 1950 or
any other order made thereunder ? YES/NO

5. Whether it is to be circulated to the Civil Judge ? YES/NO

Mr. Z.F Bharda, learned advocates for the Petitioner.

CORAM : S.K KESHOTE, J.

6-02-1996

ORAL JUDGEMENT

Heard learned counsel for the petitioner. Vide advertisement dated 27th July, 1990, published in Gujarat Samachar, applications for the post of Legal Adviser (Departmental Head : Grade-B) were invited by Gujarat State Road Transport Corporation {hereinafter referred to as "the Corporation"}.

1.1 Petitioner has come up with a case that he had submitted his application in response to the said advertisement and he was called for interview alongwith other 25 candidates. After the interview, Select List was prepared and as per the case of the petitioner, his name appeared in the said Select List. From the advertisement dated 27th July, 1990, it comes out that only one post appears to have been advertised. In para No. 2.3, the petitioner has stated that in the month of January, 1996, he came to know from private sources that his name has been included between one to ten of the select list. This averment has been verified by the petitioner in his affidavit stating "to the best of petitioner's information and belief". The source of information is not disclosed. In the absence of a propely sworn affidavit, it is too difficult to believe that the petitioner was placed in the Select List or not; as averred. The Court proceeds with the assumption that his name was in the select list. Now, the question arises whether in this case a writ of mandamus can be issued to the respondents to give appointment to the petitioner on the basis of the Select list which has been prepared in response to the advertisement dated 27th July, 1990. The select list which has been prepared in response to the advertisement dated 27-7-1990 has not been given effect. The Corporation has not made any appointments from the said select list. It is not the case of the petitioner that any candidate who was lower in the merit in Select List prepared in response to the advertisement dated 27-7-1990 has been given appointment. From the fact that in the year 1992, afresh applications were invited for the post of Legal Adviser, it is clear that the Corporation has not made any appointments on the basis of select list prepared in response to the advertisement dated 27th July, 1990. From the later advertisement, it is clear that there was only one vacancy. The learned counsel for the petitioner admitted that in response to subsequent advertisement dated 30th June, 1992,

petitioner did not apply for the post. It is also admitted that no appointments were made in pursuance to the advertisement dated 30th June, 1992 also. In view of these facts, none of the legal or fundamental rights of the petitioners is infringed. This writ petition has been filed after more than 5 years of the first advertisement and challenge to the second advertisement is made after more than 3 years. In view of the aforesaid facts, this writ petition deserves to be dismissed on the ground of delay but otherwise also on merits, the petitioner has no case. At the most, it is a case where the petitioner's name has been placed in the select list but merely inclusion of the name of a candidate in the Select List does not confer any right of appointment to the petitioner. The learned counsel or the petitioner contended that the vacancies are there and the Corporation has made appointment on those vacancies of the unqualified person. Reference in this aspect has been made to an Order (Annexure "D"). I have gone through the order annexure-D. Shri J.D Vohra, who was holding the post of Chief Labour Officer was given additional charge of the post of Legal Adviser. It cannot be said to be a case of appointment. Naturally when selection is not made, the Corporation has to take work and as such this is only the case where temporary arrangement has been made. Shri Trivedi, who was holding the post of Legal Adviser has been transferred under the Orders dated 10th February, 1995 so it is also not the case of appointment. Under the Order dated 16th September, 1995, one Shri S.V Harsh was ordered to be given 10% of the pay to work additionally on the post of Legal Adviser. That order has also no relevance whatsoever. The petitioner did not challenged those orders. What he has prayed is that the respondent-Corporation be restrained from making appointments of unqualified person to the post of Legal Adviser till the regularly selected candidate whose name appear in the select list prepared in pursuance to the advertisement dated 27th July, 1990 are appointed. That prayer cannot be accepted. From the facts which have been stated above, it comes out that the post of legal adviser is vacant but again, mainly the vacancy is in existence, it did not give any legal right to the selected candidate. Reference in this respect may have to the latest decision of the Supreme Court in the case of Union of India versus S.S Uppal & Anr., reported in JT 1996 (1) S.C 258. Discussions regarding the subject are at paragraph 17 which are as follows :-

"17. This case again does not throw any light on the controversy raised before us. Uppal was being taken into Administrative Service. He was actually inducted into the service on 15th February, 1989. The rules which were in force on that day for determination of seniority will clearly apply to his case. It is true

that Uppal's name was included in a penal drawn up some time in August, 1988. But mere inclusion in a penal drawn did not confer upon him any right to automatic appointment to the I.A.S. Nor can it be said that he was to be treated as to have been appointed from the date when a suitable post fell vacant. It has been stated in the affidavit filed before the tribunal by Shri Hari Singh, Under Secretary to the Government of India that although a vacancy had arisen on 1st February, 1989, the proposal for appointment of Uppal to I.A.S was received from the State Government only on 14th February, 1989. The seniority of an officer appointed into the I.A.S is determined according to the seniority rules applicable on the date of appointment to the I.A.S. Weightage in seniority cannot be given retrospective effect unless it was specifically provided in the rule in force at the material time. In the case of Shankarasan Dash v. Union of India (JT 1991 (2) S.C 380), it was pointed out by this Court that the existence of vacancies did not give any legal right to a selected candidate."

It is a settled law that a candidate or his empanelment does not acquire an indefeasible right of the appointment. The learned counsel for the petitioner placed reliance on the decision of the Supreme Court reported in 1993 (2) SCC page 573. This case is not of any help to the petitioner. Much emphasis has been laid by the learned counsel for the petitioner that selection has been made and if the appointments are not given then those selections are nothing but farce. That is not the case here. It is for the authority to decide whether to appoint him or not. As stated earlier, mere inclusion of name in the select list does not in any manner confers right of appointment to the petitioner. The very fact that no candidates have been given appointment out of the list prepared in pursuance to advertisement dated 27-7-1990 gives out an impression that the Corporation did not consider any of the candidates to be suitable for the job advertised. The second advertisement is issued within a short period which shows that the earlier selection was not accepted. It is between the Corporation and the Selection Committee to make appointments or not to make appointments, but in doing so it cannot act arbitrary, which is not the case here. It is not the case here that the Corporation has made any pick or choose much less of the candidate who is less meritorious than the petitioner.

None of the legal and fundamental rights of the petitioner are infringed. Writ petition is wholly misconceived and the same is dismissed.
